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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

15 CR 157 (LAK)

5 TRENDON SHAVERS,

6 Defendant.

7 -----x

8 New York, N.Y.
9 September 21, 2015
3:30 p.m.

10 Before:

11 HON. SARAH NETBURN,

12 Magistrate Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 MICHAEL FERRARA

Assistant United States Attorney

18 FEDERAL DEFENDERS OF NEW YORK

19 Attorneys for Defendant

20 CHRISTOPHER A. FLOOD

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1 (Case called)

2 (In open court)

3 THE DEPUTY CLERK: United States v. Trendon Shavers.
4 Counsel, state your appearances for the record.

5 MR. FERRERA: Good afternoon. Michael Ferrara for the
6 government.

7 MR. FLOOD: Your Honor, good afternoon. Christopher
8 Flood, Federal Defenders of New York on behalf of Mr. Shavers.
9 He's present.

10 THE COURT: Good afternoon. Good afternoon,
11 Mr. Shavers. My name is Judge Netburn.

12 I have before me a Consent to Proceed Before a United
13 States Magistrate Judge On a Felony Plea Allocution that you
14 have signed. What this form says is knowing you have the right
15 to have this plea taken before a United States district judge
16 you are agreeing to have this plea taken before me, a United
17 States magistrate judge. Is that correct?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Before you signed this form did your
20 lawyer explain it to you?

21 THE DEFENDANT: Yes.

22 THE COURT: It is accepted.

23 I have before me an indictment, it charges you with
24 one count of securities fraud in violation of Title 15 of the
25 United States Code Sections 78(j)(b), 78(f)(f) and Title 17 of

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1 the Code of Federal Regulations, Section 240.10b-5. I've been
2 informed that you wish to change your plea and enter a plea of
3 guilty as to this charge. Is that correct?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Before deciding whether to accept your
6 guilty plea I am going to ask you certain questions. It's very
7 important that you answer these questions honestly and
8 completely. The purpose of these proceedings is to make sure
9 that you understand your rights, to decide whether you are
10 pleading guilty of your own free will and to make sure that you
11 are pleading guilty because you are guilty and not for some
12 other reason. Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: If you don't understand any of my
15 questions or at any point in time you want to consult with your
16 attorney, please say so, because it's important that you
17 understand every question before you answer it. Will you do
18 that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Mr. Merdieta, will you swear in the
21 defendant?

22 (Defendant sworn)

23 THE COURT: Sir, can I have your full name?

24 THE DEFENDANT: Trendon T. Shavers.

25 THE COURT: And how old are you?

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1 THE DEFENDANT: 33 today.

2 THE COURT: Today is your birthday? Happy birthday.
3 Are you a United States citizen?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: How far did you go in school, sir?

6 THE DEFENDANT: High school and then tech classes.

7 THE COURT: Tech classes?

8 THE DEFENDANT: Yes.

9 THE COURT: Technology?

10 THE DEFENDANT: Yes.

11 THE COURT: How many credits did you obtain in that
12 field?

13 THE DEFENDANT: There were certifications so it's a
14 little different than credits. But I did certification
15 courses. I got six or seven certifications.

16 THE COURT: Okay. Are you currently or have you
17 recently been under the care of a doctor or a psychiatrist for
18 any reason?

19 THE DEFENDANT: No.

20 THE COURT: Have you taken any mind-altering drugs,
21 medicine or pills or consumed any alcohol in the last 24 hours?

22 THE DEFENDANT: No. No.

23 THE COURT: Are you sober now?

24 THE DEFENDANT: Yes.

25 THE COURT: Is your mind clear today?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand what's going on in these
3 proceedings?

4 THE DEFENDANT: Yes.

5 THE COURT: Does either counsel have any objections to
6 the defendant's competence to enter a guilty plea at this time?

7 MR. FERRERA: No, your Honor.

8 MR. FLOOD: No, your Honor.

9 THE COURT: Sir have you received a copy of the
10 written charges against you in this case known as the
11 indictment?

12 THE DEFENDANT: Yes, I have your Honor.

13 THE COURT: Have you read it?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand what it says?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you want me to read it to you in open
18 court?

19 THE DEFENDANT: No.

20 THE COURT: And you understand that you've generally
21 been charged with a felony offense for violating our securities
22 laws?

23 THE DEFENDANT: Right.

24 THE COURT: Have you had time to talk to your attorney
25 about these charges and about how you wish to plead?

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1 THE DEFENDANT: Yes.

2 THE COURT: Has he discussed with you the consequences
3 of your plea?

4 THE DEFENDANT: Yes.

5 THE COURT: Are you satisfied with your attorney's
6 representation of you?

7 THE DEFENDANT: Very much so.

8 THE COURT: I'm now going to explain certain
9 constitutional rights that you have. These are rights you will
10 be giving up if you enter a guilty plea. Please listen
11 carefully to what I have to say and if you don't understand
12 something please stop me and your attorney or I will explain
13 the matter more fully okay?

14 THE DEFENDANT: Okay.

15 THE COURT: Under the Constitution and the laws of the
16 United States you have the right to plead not guilty to the
17 charges contained in this indictment. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: If you pled not guilty you will be
20 entitled under the Constitution to a speedy and public trial by
21 a jury of those charges. At that trial you would be presumed
22 innocent and the government will be required to prove you
23 guilty beyond a reasonable doubt before you could be found
24 guilty. That means you would not have to prove you were
25 innocent and you would not be convicted unless a jury of twelve

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1 people agreed unanimously that you were guilty beyond a
2 reasonable doubt. Do you understand that?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: If you decide to go to trial at that trial
5 and at every stage of your case you will have the right to be
6 represented by an attorney. If you cannot afford an attorney
7 one will be appointed to represent you at the government's
8 expense and at no cost to you. When an attorney is appointed
9 the attorney is appointed to handle your case all the way
10 through trial and not just for a guilty plea so your decision
11 to plead guilty here today should not depend on whether you can
12 afford to hire an attorney. Do you understand that?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: During a trial the witnesses for the
15 prosecution will have to come to court and testify in your
16 presence where you can see and hear them and your lawyer can
17 cross-examine those witnesses. And if you wanted your lawyer
18 could offer evidence on your behalf. You would be able to use
19 the Court's power to compel witnesses to come to court to
20 testify in your defense even if they did not want to come. Do
21 you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: At a trial you would have the right to
24 testify in your own defense if you wanted to but you would also
25 have the right not to testify and if you chose not to testify

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1 that could not be used against you in any way. No inference or
2 suggestion of guilt could be made from the fact that you did
3 not testify. Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: If you were convicted at trial you would
6 have the right to appeal that verdict to a higher court. Do
7 you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: As I said before, you have the right to
10 plead not guilty. Even right now, even as you sit here today
11 for the purposes of entering a guilty plea you have the right
12 to change your mind, persist in your not guilty plea and
13 proceed to trial. But if you do plead guilty and I accept your
14 plea, you will give up a trial and all of the other rights that
15 I have just described. If you plead guilty there will be no
16 trial. All that will remain to be done will be to impose a
17 sentence. You and the government will have an opportunity to
18 make arguments about what that sentence should be, but there
19 will not be any further trial to determine whether you are
20 guilty or not guilty of the charges as to which you plead
21 guilty. Do you understand that?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: Do you understand that the decision as to
24 the appropriate sentence in this case will be entirely up to
25 the sentencing judge and that that judge will be bound only by

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1 what the law requires. This means that even if you are
2 surprised or disappointed by your sentence you will still be
3 bound by your guilty plea. Do you understand that?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Finally, if you do plead guilty you are
6 giving up your right not to incriminate yourself and I will ask
7 you questions about what you did in order to satisfy myself
8 that you are actually guilty. By pleading guilty you are
9 admitting your factual as well as legal guilt. Do you
10 understand that?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: You said earlier that you've read the
13 indictment and you understand the charges against you and you
14 understand that you've been charged with one count of
15 securities fraud. I'm now going to ask the Assistant United
16 States Attorney to state the elements of that charge. The
17 elements are the things that the government would have to prove
18 beyond a reasonable doubt if the case were to proceed to trial.

19 MR. FERRERA: Yes, your Honor, and Mr. Shavers was
20 also charged with wire fraud, although he is not pleading
21 guilty to that today, only to securities fraud, Count One.

22 Your Honor, had Count One proceeded to trial the
23 government would have been required to prove that during the
24 time period alleged Mr. Shavers in connection with the purchase
25 or sale of securities -- and this is going to be sort of an

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1 ABC. That he either, A, employed a device, scheme or artifice
2 to defraud or, B, made an untrue statement of a material fact
3 or omitted to state a material fact which made what was said
4 under the circumstances misleading or, C, engaged in an act,
5 practice or course of business that operated or would operate
6 as a fraud or deceit upon a purchaser or seller. That's the
7 end of the sort of ABC, and that Mr. Shavers acted knowingly,
8 willfully and with the intent to defraud and that he used or
9 caused to be used any means or instruments of transportation or
10 communication in interstate commerce or the use of mails in
11 furtherance of the fraudulent conduct.

12 THE COURT: Thank you. Sir, I'm now going to tell you
13 the maximum possible penalty for this crime. The maximum means
14 the most that could possibly be imposed. It does not
15 necessarily mean this is what you will receive but you have to
16 understand that by pleading guilty here today you are exposing
17 yourself to any combination of punishments up to the maximum
18 that I'm about to describe. Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: First, let me tell you about the maximum
21 possible term of imprisonment. For this case, it carries a
22 maximum term of imprisonment of 20 years and a maximum term of
23 supervised release of three years. Supervised release means
24 that if you are sentenced to prison and thereafter released
25 from prison you may be subject to supervision by the probation

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1 department and if you violate any of the terms or conditions of
2 your release you may have your term of supervised release
3 previously imposed, it may be revoked and you may be returned
4 to prison without giving you any credit for the time served on
5 post-release supervision. Do you guys need two minutes?

6 THE DEFENDANT: No, that's all right.

7 MR. FLOOD: Thank you.

8 THE COURT: In addition to these restrictions on your
9 liberty the maximum possible punishment also includes financial
10 punishments. In this case the maximum allowable fine is \$5
11 million. In light of the severity of that possible fine it may
12 be trivial to mention it, but I'm required by law to tell you
13 there's a mandatory minimum fine or a special assessment of
14 \$100 that must be imposed with a count of conviction.

15 Sir, has anyone threatened you or coerced you in any
16 way to get you to plead guilty?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: Has anyone other than the prosecution by
19 way of this plea agreement promised you or offered you anything
20 to get you to plead guilty?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: I understand that there is an agreement in
23 this case between you and the government concerning this plea,
24 is that correct?

25 THE DEFENDANT: Yes.

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1 THE COURT: Did you sign this agreement?

2 THE DEFENDANT: Yes, I did.

3 THE COURT: And before you signed it did you read it?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand its terms?

6 THE DEFENDANT: I do.

7 THE COURT: Have you had an opportunity to speak to
8 your lawyer about the terms of this agreement?

9 THE DEFENDANT: I have, your Honor.

10 THE COURT: I understand that you and the government
11 have agreed as to the appropriate calculations of your sentence
12 under the sentencing guidelines, is that correct?

13 THE DEFENDANT: That is correct.

14 THE COURT: And you've agreed that the appropriate
15 guidelines range is 33 to 41 months' imprisonment, is that
16 correct?

17 THE DEFENDANT: Correct.

18 THE COURT: In addition, you agreed that the
19 appropriate fine range is between \$7,500 and \$5 million, is
20 that correct?

21 THE DEFENDANT: Correct.

22 THE COURT: In this agreement you've agreed that
23 neither you nor the government will seek a departure or
24 adjustment pursuant to the guidelines. Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: Right, so you've agreed that you're not
2 going to argue to Judge Kaplan that he should calculate the
3 guidelines range differently by adjusting that range. Do you
4 understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: But the parties are allowed to seek a
7 sentence outside the stipulated guidelines range based on the
8 sentencing factors. Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: In addition n this agreement you have
11 admitted to the forfeiture allegation with respect to Count One
12 of the indictment and agreed to forfeit to the United States a
13 sum of money equal to the amount of proceeds obtained as a
14 result of the charged offenses and any other relevant conduct
15 set forth. Do you understand that?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: And you've also agreed to make restitution
18 in an amount to be ordered by the Court. Do you understand
19 that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: In this agreement you have also agreed to
22 limit in certain respects your ability to appeal from your
23 conviction. Specifically, you've agreed that you will not file
24 a direct appeal or bring a collateral challenge, also known as
25 a habeas motion or seek a sentence modification so long as the

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1 sentence is within or below the stipulated guidelines range of
2 33 to 41 months' imprisonment. Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: You hesitate for a minute. So you agree
5 you're not going to appeal any sentence or seek a sentence
6 modification or make a habeas argument, collateral challenge to
7 your sentence so long as Judge Kaplan sentences you within the
8 guidelines range of 33 to 41 months' imprisonment, you
9 understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: In addition, you've agreed that you will
12 not appeal any term of supervised release that is less than or
13 equal to the statutory maximum of three years and you will not
14 appeal any fine that is less than or equal to \$5 million. Do
15 you understand that?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: I want to make sure you understand that
18 Judge Kaplan is not bound by this plea agreement and that he
19 will be required to make his own calculation under the
20 sentencing guidelines and impose a sentence based on what he
21 believes is the appropriate sentence for you. Do you
22 understand that?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: This means that he may reject the
25 recommendation set forth in the plea agreement without

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1 permitting you to withdraw your guilty plea and then impose a
2 more severe sentence. Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Judge Kaplan is required to make his own
5 calculation based on what he believes is appropriate for you,
6 even if it is different than the one set forth in this
7 agreement. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: In determining that sentence the Court
10 will consider in addition to the guidelines and possible
11 departures from those guidelines all of the factors that are
12 set forth in our sentencing statute, which is found in Title 18
13 of the United States Code, Section 3553(a). Do you understand
14 that?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: In addition, the Court will consider the
17 presentence report which is prepared by probation in advance of
18 sentencing. Before you are sentenced you and the government
19 will have an opportunity to make arguments and challenge any of
20 the fact that are reported by the probation officer. Do you
21 understand all that?

22 THE DEFENDANT: Yes.

23 THE COURT: Sir, now that you've been advised of the
24 charges against you, the possible penalties that you face and
25 the rights that you are giving up, is it still your intention

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1 to plead guilty to Count One in the indictment?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: So with respect to Count One in the
4 indictment, how do you plead?

5 THE DEFENDANT: Guilty.

6 THE COURT: Could you tell me in your own words what
7 you did to make you believe you are guilty as charged?

8 THE DEFENDANT: During the period of September 2011 to
9 September 2012 I engaged in the sale of investment contracts
10 involving online currency.

11 THE COURT: Could you speak a little more slowly so we
12 can get everything down? I know this is a nerve-racking
13 process.

14 THE DEFENDANT: I engaged in the sale of investment
15 contracts involving online currency bitcoin. During this time
16 I knowingly induced purchasers of bitcoin investment contracts
17 to invest by making false statements. Based on these false
18 statements I in fact did receive money from investors that were
19 not used for the stated purpose. I know what I did was wrong
20 and I'm very sorry.

21 THE COURT: And your communications, were they
22 electronic? How were you communicating with these investors?

23 THE DEFENDANT: Yes, electronic.

24 THE COURT: Any other questions you would like me to
25 ask this defendant?

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1 MR. FERRERA: I don't think so, your Honor. I believe
2 the parties -- I spoke to Mr. Flood earlier. I believe the
3 parties are prepared to stipulate that the investment contract
4 Mr. Shavers described qualified as a security under the law,
5 that some of the e-mails sent by Mr. Shavers or received by him
6 in furtherance of the fraud traveled in interstate commerce and
7 that some of the proceeds of the illicit conduct passed through
8 Manhattan on their way to Mr. Shavers' bank account.

9 MR. FLOOD: That's correct, your Honor.

10 THE COURT: Do you want to proffer the evidence you
11 would produce at trial if the case were to proceed?

12 MR. FERRERA: Let me start with the last thing. We
13 would have had bank records showing movement of money including
14 to Mr. Shavers. We would have had lengthy internet chats that
15 Mr. Shavers admittedly participated in in which he made false
16 statements to investors promising them very, very high interest
17 rates in return for initial investments, as high as 1 percent
18 interest per day. We would have victims come in who were
19 induced to invest under those circumstances who did not receive
20 the bitcoin that they were expecting. We would have had
21 trading records showing that Mr. Shavers did in fact invest
22 some of the bitcoin he received in a trading platform called
23 Mt. Gox, which is now defunct, which was a bitcoin trading
24 platform, but the amount that Mr. Shavers invested was not
25 close to the amount he actually received. In fact, we would

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1 have proven that he was receiving money from investor B in
2 order to pay investor A, that is to say, he had the telltale
3 signs of a Ponzi scheme. That's what our evidence would have
4 shown.

5 THE COURT: Thank you. Mr. Shavers, I just want to
6 confirm you read from a prepared statement. I just want to
7 make sure that that statement is your own and that all of the
8 things that you reported to me are true and complete?

9 THE DEFENDANT: Yes, working out some lingo with my
10 attorney, but, yes, these are my words.

11 THE COURT: Based on your responses to my questions,
12 sir, and my observation of your demeanor, I find you are
13 competent to enter a guilty plea. I am satisfied you
14 understand your rights including your right to go to trial, you
15 are aware of the consequences of your plea, including the
16 sentence that may be imposed; that you are voluntarily pleading
17 and you admitted you are guilty as charged in Count One of the
18 indictment. For these reasons I'll recommend that District
19 Judge Kaplan accept your plea of guilty as to Count One in the
20 indictment.

21 I assume the government will order a copy of the
22 transcript and submit it to Judge Kaplan so he may act on my
23 recommendation?

24 MR. FERRERA: Yes, of course, your Honor and Judge
25 Kaplan has set February 3, 2016 as a sentencing date.

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1 THE COURT: I'll order a sentencing submission be
2 prepared. Can you deliver the summary within the next 14 days?

3 MR. FERRERA: Yes.

4 THE COURT: Counsel, can you have your client ready
5 within the next 14 days to report to probation?

6 MR. FLOOD: Yes, your Honor. There is some difficulty
7 because the defendant lives outside of Dallas so for the
8 presentence interview it would have to be done telephonically.

9 THE COURT: Not a problem.

10 MR. FLOOD: We will schedule that, but probation will
11 be aware, I could come in person, I would love to do that,
12 but--

13 THE COURT: I don't think it's a problem to do it over
14 the telephone.

15 MR. FLOOD: Although for the drug testing they would
16 have him, I think it's the Western District of Texas --

17 THE DEFENDANT: Southern District of Texas.

18 THE COURT: Hopefully they'll work with their
19 colleagues and work this out. Very good. Any objections to
20 continuing the present bail?

21 MR. FERRERA: None.

22 THE COURT: Sir, all of the conditions on which you
23 were released up to now continue to apply and a violation of
24 those conditions could have very serious consequences including
25 bail revocation and prosecution for bail jumping. Do you

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1 understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Also, if you commit any crime while
4 released on bail, that would lead to a more severe punishment
5 then you would get for committing the same crime at any other
6 time. Of course, if you commit a crime or violate the plea
7 agreement with the government in any way you may be subject to
8 revocation by the government of your plea agreement and all the
9 consequences that are described in that plea agreement.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: All right, anything further?

13 MR. FERRERA: No, your Honor.

14 MR. FLOOD: No, your Honor.

15 THE COURT: Thank you.

16 (Adjourned)

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